

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Braunstein et. al
Serial No.: 09/490,019
Filed: January 21, 2000
For: PORTABLE HEALTH ASSISTANT

Group Art Unit: 3624
Examiner: J. Patel

January 24, 2003

Assistant Commissioner for Patents
Washington, DC 20231

DECLARATION UNDER 37 C.F.R. 1.131

Sir:

I, Mark L. Braunstein, do hereby declare and state as follows:

1. I, along with Stephen P. Miller, am a co-inventor of the invention described and claimed in the above-referenced patent application. I have reviewed the Office Action mailed September 24, 2002 in the above-referenced application. I have also reviewed U.S. Patent No. 6,024,699 to Surwit et al., which is relied upon by the Examiner as disclosing or suggesting the method of delivering health care through a portable health assistant recited in Claims 1-10, the computer-implementable method for providing health care under the supervision of a remote clinician of Claims 11 - 22, the computer-readable medium of Claim 23, the portable health assistant of Claim 24, and the portable health assistant system of Claim 25. This Declaration is filed to establish invention of the subject matter claimed in the present application prior to the March 13, 1998, filing date of the *Surwit et al.* patent.

2. Prior to March 13, 1998, Stephen P. Miller and I developed and implemented a portable health assistant. Our development of this portable health assistant ultimately led to the filing of the above-referenced patent application.

3. In support of the foregoing statement, I hereby submit, as attached Exhibit A, a copy of a System Pilot Agreement executed by Immanuel St. Joseph's - Mayo Health System and Patient Care Technologies, Inc. ("PtCT") (the company that I was associated with when Stephen P. Miller and I conceived and reduced the portable health assistant to practice). This System Pilot Agreement, which is formally titled "*Patient Care Technologies, Inc. - System Pilot Agreement*" memorializes an agreement between St. Joseph's and PtCT under which PtCT agreed to provide to St. Joseph's, for confidential, testing purposes only, the "well.at.home" Patient and Clinician applications that were

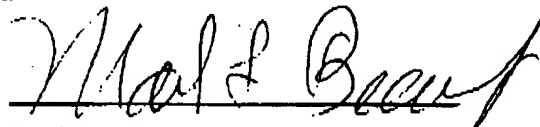
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described in PtCT's then-current patient and clinician User's Manuals. The execution date of this System Pilot Agreement has been redacted from Exhibit A, but it is prior to March 13, 1998.

4. In further support of the foregoing statement, I hereby submit, as attached Exhibits B and C, respectively, a draft clinician user manual and a draft patient user manual that were the current PtCT User Manuals at the time that the System Pilot Agreement of Exhibit A was executed by St. Joseph's and PtCT. These User Manuals, which are referenced specifically in the System Pilot Agreement of Exhibit A, provide a detailed discussion of the portable health assistant and its various features. These documents were prepared prior to March 13, 1998.

5. In further support of the foregoing statement, I hereby submit, as attached Exhibit D, dated excerpts from my invention notebook. These excerpts detail various features of the portable health assistant. The dates on these excerpts have been redacted from enclosed Exhibit D, but all of these dates are prior to March 13, 1998.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of United States Code and that such willful false statements may jeopardize the validity of the application or any corresponding U.S. patent.


Mark L. Braunstein

Date: 1/24/03